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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)
VICTOR EMEONYE,) No. 04-03386 SC
)
Plaintiff,)
) ORDER GRANTING
v.) PLAINTIFF'S MOTION
) FOR SUMMARY JUDGMENT
MICHAEL J. ASTRUE,) AND DENYING
Commissioner of Social) DEFENDANT'S CROSS-
Security,) MOTION FOR SUMMARY
Defendant.) JUDGMENT

)

I. INTRODUCTION

This matter is before the Court on cross-motions for summary judgment filed by the plaintiff Victor Emeonye ("Plaintiff" or "Claimant") and the defendant Michael J. Astrue ("Defendant"). Docket Nos. 28, 30. Plaintiff submitted a Reply. Docket No. 31. Plaintiff seeks review and reversal of the Social Security Commissioner's final decision denying his claim for Social Security Disability Insurance benefits. For the reasons set forth below, the Court GRANTS Plaintiff's Motion for Summary Judgment and DENIES Defendant's Cross-Motion for Summary Judgment.

II. BACKGROUND

A. Procedural

In August 2004, Plaintiff filed a Complaint seeking review of the Social Security Commissioner's denial of disability benefits.

1 Docket No. 1. After the parties filed cross-motions for summary
2 judgment, this Court issued an Order remanding the claim to the
3 Administrative Law Judge ("ALJ") for further consideration of
4 newly-discovered evidence of Plaintiff's recurring seizures. See
5 Order, Docket No. 23. A second hearing was held and Plaintiff's
6 claim for disability benefits was again denied. Administrative
7 Record ("AR") at 327-336.¹

8 On January 16, 2007, after the hearing but before the ALJ
9 issued a decision, Plaintiff unexpectedly died. AR at 309.
10 Plaintiff was 49 years old. Id. Neither party has indicated the
11 cause of Plaintiff's death. The Court can only assume, therefore,
12 that his death was not related to his health issues. Were this
13 otherwise, Plaintiff's death could have provided key evidence of
14 the severity of Plaintiff's medical conditions.

15 In any event, after Plaintiff died, the parties submitted a
16 stipulation, which this Court approved, substituting Plaintiff's
17 daughter, Thelma Brittany Emeonye, a minor child, in Plaintiff's
18 stead. Docket No. 27. Although Plaintiff's claim for
19 Supplemental Security Income benefits under Title XVI is
20 extinguished by this substitution, Plaintiff's claim for Social
21 Security Disability Insurance benefits under Title II is
22 unaffected. See Pl.'s Mot. Summ. J. at 3. Therefore, the
23 analysis regarding Plaintiff's claim is unchanged by the

24
25 ¹ As Plaintiff's claim has been remanded once already, two
separate Administrative Records exist. The more recent AR, dated
26 June 19, 2007, is the operative AR for the current action and shall
be referred to as simply "AR." The previous AR, which the Court
27 relied upon in it's initial Order remanding Plaintiff's claim, is
dated October 20, 2004, and shall be referred to as the "2004 AR."

1 substitution of Plaintiff's daughter for Plaintiff.

2 **B. Factual**

3 As a preliminary matter, the Court must take note of several
4 disturbing factual inaccuracies in the record. Most prominently
5 and egregiously, the entire first paragraph of the Statement of
6 the Case in Defendant's Cross-Motion for Summary Judgment contains
7 not one fact or citation that is even remotely related to
8 Plaintiff's action. For example, the first sentence in this
9 paragraph states, "Plaintiff was born on February 13, 2007 (Tr.
10 22, 56)." Def.'s Mot. at 2. Plaintiff Emeonye, however, was born
11 August 15, 1958, as even the most cursory examination of the
12 record demonstrates.² See, e.g., AR at 17. Submissions
13 containing such factual errors indicate a remarkable inattention
14 to even the most basic details.

15 The other factual discrepancy worth noting is in the ALJ's
16 decisions themselves. In both the decision issued on February 19,
17 2004, AR 27-31, and the decision issued on February 2, 2007, id.
18 at 330-36, the ALJ inexplicably states that Plaintiff "was born in
19 Nicaragua." AR at 28, 331. As stated on his death certificate
20 and as noted by at least two of Plaintiff's medical examiners,
21 however, Plaintiff was from Nigeria, not Nicaragua. See AR at
22 151, 309, 528. Such factual mistakes are troubling.

23 Plaintiff worked as a security guard from 1986 to 2002. 2004
24 AR at 28. On June 4, 2002, he was stabbed multiple times and
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26 ² It is equally clear that this birth date does not pertain
27 to Plaintiff's daughter, who, at the time of this Order, is a
teenager.

1 suffered injuries to the chest, neck, abdomen, and hand. AR at
2 135. He was taken to San Francisco General Hospital, where he
3 underwent open-heart surgery to repair a "very complex laceration
4 of the right ventricle" and to remove a "large amount of clot" in
5 the pericardium. Id. Plaintiff's attending surgeons also
6 performed a limited upper abdominal exploration, but elected not
7 to undertake a full exploratory laparotomy because of the
8 extensive adhesions already present in his abdomen as a result of
9 a 1997 incident in which he was shot. Id. Plaintiff remained in
10 the hospital for eight days and was released with a good
11 prognosis. AR at 138. Plaintiff alleged that he had been
12 disabled since the date of the stabbing, June 4, 2002.

13 After his discharge from the hospital, Plaintiff began to
14 experience severe migraine headaches, nausea, watery eyes, and
15 dizziness. AR 215-17; 258-63. As a result of these symptoms,
16 Plaintiff visited medical centers in October, November, and
17 December 2002, and again in January, February, and March 2003.
18 2004 AR at 213-17.

19 On February 9, 2003, Plaintiff had a seizure and was treated
20 at San Francisco General Hospital. AR at 124. A CT scan taken
21 days later revealed a chronic subdural hematoma. Id. at 209-10.
22 A subsequent CT scan taken May 6, 2003, confirmed this diagnosis
23 and also revealed a "left inferior temporal fossa, possibly
24 related to post traumatic encephalomalacia." Id. at 265. A third
25 CT scan was performed on March 3, 2004, after Plaintiff's initial
26 December 10, 2003, hearing. Id. at 483. This exam revealed no
27 significant changes in his physiological condition, although it
28

1 was noted that there was "[m]ore focal volume loss . . . in the
2 left inferior temporal and frontal lobes." Id.

3 Plaintiff experienced another seizure on April 28, 2004, for
4 which he was treated at Seton Medical Center. 2004 AR 19-20.
5 Plaintiff was instructed to see a physician for follow-up care,
6 and was discharged with a prescription for Dilantin anti-seizure
7 medication. Id. at 19. On May 1, 2004, Plaintiff checked in to
8 the Emergency Department of the Saint Francis Medical Center,
9 where he received medical attention for hallucinations and
10 possibly another seizure. Id. at 21; AR at 332. In October 2005,
11 Plaintiff suffered another seizure. AR at 332.

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13 **III. LEGAL STANDARD**

14 To qualify for disability benefits, a claimant must show that
15 he or she is unable "to engage in any substantial gainful activity
16 by reason of any medically determinable physical or mental
17 impairment which can be expected to result in death or which has
18 lasted or can be expected to last for a continuous period of not
19 less than twelve months . . ." 42 U.S.C. § 423(d)(1)(A). In
20 making this determination, "an ALJ conducts a five step inquiry.
21 20 C.F.R. §§ 404.1520 & 416.920." Lewis v. Apfel, 236 F.3d 503,
22 508 (9th Cir. 2001).

23 The ALJ first considers whether the
24 claimant is engaged in substantial
25 gainful activity; if not, the ALJ asks in
26 the second step whether the claimant has
27 a severe impairment (i.e., one that
significantly affects his or her ability
to function); if so, the ALJ asks in the
third step whether the claimant's
condition meets or equals one of those

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1 outlined in the Listing of Impairments in
2 Appendix 1 of the Regulations [20 C.F.R.
3 §§ 404.1520(d) & 416.920(d)]; if not,
4 then in the fourth step the ALJ asks
5 whether the claimant can perform in his
6 or her past relevant work; if not,
7 finally, the ALJ in the fifth step asks
8 whether the claimant can perform other
9 jobs that exist in substantial numbers in
10 the national economy. 20 C.F.R. §§
11 404.1520(b)-404.1520(f)(1) & 416.920(b)-
12 416.920(f)(1).

13 Id.

14 Courts may set aside a decision of the ALJ if it is not
15 supported by substantial evidence. 42 U.S.C. § 405(g); Holohan v.
16 Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001). "Substantial
17 evidence" is the relevant evidence which a reasonable person might
18 accept as adequate to support the ALJ's conclusion. Reddick v.
19 Chater, 157 F.3d 715, 720 (9th Cir. 1998). In order to be
20 "substantial," the evidence must amount to "more than a
21 scintilla," but need not rise to the level of a preponderance.
22 Holohan, 246 F.3d at 1202. Where the evidence could reasonably
23 support either affirming or reversing the ALJ's decision, a court
24 may not substitute its judgment for the ALJ's decision. Id.

25 **IV. DISCUSSION**

26 Plaintiff asserts three independent justifications for
27 reversing the ALJ's finding and granting disability benefits.
28 Plaintiff's first argument is that the ALJ ignored evidence that
established that Plaintiff had an impairment equal to a listing
impairment of Appendix 1, and the ALJ therefore erred by not
finding Plaintiff disabled. As resolution of this issue disposes
of the entire action, the Court need not reach Plaintiff's

1 remaining two arguments.

2 **A. Failure to Consider Evidence Establishing that**
3 **Plaintiff's Impairment Equals a Listed Impairment**

4 As noted above, in the third step of his inquiry, "the ALJ
5 asks . . . whether the claimant's condition meets or equals one of
6 those outlined in the Listing of Impairments in Appendix 1 of the
7 Regulations." Lewis, 236 F.3d at 508 (citing 20 C.F.R. §§
8 404.1520(d) & 416.920(d)). 20 C.F.R. § 404.1525(c)(5) states that
9 if a claimant's impairment "does not meet the criteria of a
10 listing, it can medically equal the criteria of a listing." Medical
11 equivalence may exist if the impairment "is at least equal
12 in severity and duration to the criteria of any listed
13 impairment." 20 C.F.R. § 404.1526(a).

14 Plaintiff asserts that his mental impairments equal the
15 severity of the Listing Impairment for mental retardation and that
16 Plaintiff therefore is disabled. To satisfy the requirements for
17 the Listing for mental retardation, a plaintiff must "satisf[y]
18 the diagnostic description in the introductory paragraph and any
19 one of the four sets of criteria." 20 C.F.R. Pt. 404, Subpt. P,
20 App. 1, § 12.00. The introductory paragraph states:

21 Mental retardation: Mental retardation
22 refers to significantly subaverage
23 general intellectual functioning with
24 deficits in adaptive functioning
25 initially manifested during the
26 developmental period; i.e., the evidence
27 demonstrates or supports onset of the
28 impairment before age 22. The required
 level of severity for this disorder is
 met when the requirements in A, B, C, or
 D are satisfied.

1 Id. at § 12.05.

2 The parties do not dispute that the requirements of subpart C
3 are the only requirements germane to the present action. These
4 requirements are: "A valid verbal, performance, or full scale IQ
5 of 60 through 70 and a physical or other mental impairment
6 imposing an additional and significant work-related limitation of
7 function" Id. Neither party disputes the fact that
8 Plaintiff was diagnosed with a performance I.Q. of 67. See AR
9 523. In addition, both parties agree that Plaintiff has a
10 "physical or other mental impairment" 20 C.F.R. Pt. 404,
11 Subpt. P, App. 1, § 12.05. Indeed, as Defendant concedes, "the
12 ALJ found that Plaintiff satisfied the severity requirement."
13 Def.'s Mot. at 7. The ALJ, in his report, stated: "The medical
14 evidence establishes that the claimant has severe chronic subdural
15 hematoma" AR at 335. Finally, neither party argues that
16 there is any evidence to support onset of the impairment before
17 Plaintiff was 22. The issue, therefore, is whether it is possible
18 for Plaintiff to medically equal the Listing Requirements for
19 mental retardation if there is no evidence of early onset. The
20 Court answers this question in the affirmative.

21 As the regulations state, medical equivalence can be found in
22 three ways, two of which are relevant to the present action:

23 (1) If you have an impairment that is
24 described in appendix 1, but . . . [y]ou
25 do not exhibit one or more of the
26 findings specified in the particular
27 listing . . . [w]e will find that your
 impairment is medically equivalent to
 that listing if you have other findings
 related to your impairment that are at
 least of equal medical significance to

1 the required criteria.

2 (2)

3 (3) If you have a combination of
4 impairments no one of which meets a
5 listing, we will compare your
6 findings with those for closely analogous
7 listed impairments. If the findings
8 related to your impairments are at least
9 of equal medical significance to those of
10 a listed impairment, we will find that
11 your combination of impairments is
12 medically equivalent to that listing.

13 20 C.F.R. § 404.1526(b).

14 The essence of these subsections is that strict conformity
15 with the Listing Requirements is not necessarily required for a
16 finding of disability. If a plaintiff is only able to demonstrate
17 most of the requirements for a Listing or if he or she is able to
18 demonstrate analogous or similar impairments to the impairments of
19 a Listing, the plaintiff may nonetheless still satisfy the
20 standards if the plaintiff can show impairments of equal medical
21 significance. See id.

22 Under either subsection listed above, Plaintiff's medical
23 impairments equaled the requirements for mental retardation. It
24 is undisputed that Plaintiff was diagnosed with a performance I.Q.
25 of 67 and was found to have a severe impairment of a subdural
hematoma and suffer from seizures. The only requirement Plaintiff
did not satisfy for mental retardation was evidence of early
onset. The Court is convinced, however, that the severity of
Plaintiff's medical impairments today, rather than when evidence
of such impairments first presented, is the crucial question for
determining whether Plaintiff's impairments equal the Listing
requirements.

1 To satisfy § 404.1526(b)(1), Plaintiff must have "other
2 findings related to [his impairment] that are at least of equal
3 medical significance to the required criteria." 20 C.F.R. §
4 404.1526(b)(1). Plaintiff's severe impairment of subdural
5 hematoma and Plaintiff's pattern of seizures are of more than
6 equal medical significance to the required criteria of early
7 onset. Pursuant to § 404.1526(b)(1), therefore, Plaintiff's
8 impairments equal those of the Listing for mental retardation and
9 Plaintiff was disabled.

10 In the alternative, Plaintiff also satisfies §
11 404.1526(b)(3). Plaintiff's combination of impairments "are at
12 least of equal medical significance to those of [mental
13 retardation]." 20 C.F.R. § 404.1526(b)(3). Accordingly,
14 Plaintiff's "combination of impairments is medically equivalent to
15 that listing." Id.

16 These findings are consistent with 20 C.F.R. §
17 404.1525(c)(5), which states that if a claimant's impairment "does
18 not meet the criteria of a listing, it can medically equal the
19 criteria of a listing." If a plaintiff were required to actually
20 meet every requirement of a listing, as Defendant suggests in his
21 brief, § 404.1525(c)(5) would be meaningless. For these reasons,
22 the Court finds that Plaintiff's medical impairments were equal to
23 the Listing requirements for mental retardation, and, therefore,
24 Plaintiff was disabled.

25 Given the deference with which this Court must treat the
26 decision of the ALJ, this Court's analysis of the issue is not
27 necessarily dispositive. Thus, a brief examination of the ALJ's
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1 opinion is required. The ALJ stated:

2 [A]lthough Dr. Kollath reported a . . .
3 performance I.Q. of 67, his recent
4 clinical findings and assessment of
5 mental capacities reveal no medically
6 determined mental disorders imposing more
7 than slight work related limitations.
8 The test scores are not associated with a
9 diagnosis of mental retardation or any
10 corroborating evidence of a history since
11 before age 22 of impaired intellectual
12 functioning, so the requirements of
13 section 12.05 C are not found to be met
14 or equaled.

15 AR at 334.

16 It is clear from the ALJ's decision that he did not properly
17 analyze the issue of whether Plaintiff equaled, rather than met,
18 the Listing requirement for mental retardation. Although the ALJ
19 properly noted that because there was no evidence of early onset,
20 Plaintiff's medical impairments did not meet the Listing
21 requirements, there is no discussion of why Plaintiff did not
22 equal the listing requirements.

23 "[I]n determining whether a claimant equals[, rather than
24 meets,] a listing under step three of the Secretary's disability
25 evaluation process, the ALJ must explain adequately his evaluation
26 of alternative tests and the combined effects of the impairments."
27 Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990); see also
28 Galaspi-Bey v. Barnhart, No. 01-1770, 2002 WL 31928500, at *3
(N.D. Cal. Dec. 23, 2002) (stating that "in determining medical
equivalency under step three, the ALJ must adequately explain his
comparative evaluation of the applicant's impairment to the listed
impairment"). Applying this standard to the findings in this
case, the Court finds that the ALJ's statement that Plaintiff did

1 not equal the listing was insufficient. Marcia, 900 F.2d at 176.
2 The Court therefore finds that the ALJ committed legal error in
3 his medical equivalency analysis.

4 "The decision to remand the case for additional evidence or
5 simply to award the benefits is within the discretion of the
6 court." Erickson v. Shalala, 9 F.3d 813, 819 (9th Cir. 1993).
7 Where the record is fully developed, remand is unnecessary. Id.
8 In the present case, the record is fully developed. There are no
9 "outstanding issues that must be resolved before a determination
10 of disability can be made." Harman v. Apfel, 211 F.3d 1172, 1178
11 (9th Cir. 2000). Nor would "additional proceedings . . . remedy
12 defects in the original administrative proceeding . . ."
13 Marcia, 900 F.2d at 176-77 (internal quotation marks omitted).
14

15 **v. CONCLUSION**

16 For the foregoing reasons, the Court GRANTS Plaintiff's
17 Motion for Summary Judgment and DENIES Defendant's Motion for
18 Summary Judgment. The matter is remanded to the Commissioner so
19 that he may calculate and award benefits with an onset date of
20 June 2, 2002.
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23 IT IS SO ORDERED.
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25 Dated: May 5, 2008



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27 UNITED STATES DISTRICT JUDGE
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